

Decision for dispute CAC-UDRP-105385

Case number CAC-UDRP-105385

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Domain names swiskrono.com

Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization SWISS KRONO Tec AG

Complainant representative

Organization Convey srl

Respondent

Name Francis Nnamdi

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of a portfolio of registered trademarks for the word mark, SWISS KRONO, including the following marks.

- The word mark, SWISS KRONO, EUTM number 008120073, registered in November 2009 in classes 1, 16, 19, 20, 27, 35, 40, 42, 45;
- The word mark, SWISS KRONO, International Mark number 1332846, registered in March 1987 in classes 1, 2, 16, 17, 19, 20, 27, 35, 36, 37, 40, 42;
- The word mark, SWISS KRONO, Swiss national mark number 696981, registered in May 1999 in classes 35, 36, 37, 40, 42, 44.

The Complainant also owns a large portfolio of domain names consisting of the mark "SWISS KRONO" including <swisskrono.ch>, <swisskrono.de>, <swisskrono.net>, <swisskrono.us>, <swisskrono.pl>, <swisskrono.ru>, <swisskrono.ua> and <swisskrono.cn>.

All are pointed at the official website www.swisskrono.com which generates a significant level of traffic, together with linked official accounts on Facebook, LinkedIn and Xing.

The Complainant's SWISS KRONO trademark is also well-known in Nigeria, where the Respondent is based, with some retailers selling SWISS KRONO products.

FACTUAL BACKGROUND

The Complainant is SWISS KRONO Tec AG. SWISS KRONO Group is the world's leading manufacturer of engineered wood products and the global market leader in the area of laminate flooring, products for timber construction as well as for decorative furniture and interior fittings. It is a branch of SWISS KRONO Group, founded in Menznau in 1966 by Ernst Kaindl, an Austrian entrepreneur, and headquartered in Lucerne, Switzerland. From those beginnings, the company has grown steadily and in the 1980s, production expanded into France, Germany, Poland and the US. At the turn of the millennium, the first plant in Ukraine was added, followed by two more in the following years. More recently subsidiaries were established in Russia and in Hungary.

SWISS KRONO Group is now one of the world's 8 leading manufacturers of wood-based materials and in 2016 the Group celebrated its 50th anniversary with 10 plants worldwide in 8 countries and a turnover of more than CHF 2.0 billion in the last financial year. The SWISS KRONO Group employs around 5.100 people, and its products are distributed in 121 countries. It has an annual production of about 6 million cubic meters of wood products. The production chain begins with the selection of suitable wood in the forest, extends to production and naturally shapes our relationships with our customers and it has to meet the highest technical and strictest ecological requirements. SWISS KRONO brand/products are also advertised on the famous and well-known online community ARCHITONIC. With a carefully considered showcase of over 400.000 premium design products and materials, Architonic is the number-one online community for architects, designers, home-owners and design enthusiasts with 16 million visitors a year.

The disputed domain name was registered on 27 April 2022 and it is currently inactive in that it resolves to an error message and will expire in April 2023 unless renewed in the grace period.

A cease-and-desist letter sent, on 13 January 2023 by e-mail, was never answered.

PARTIES CONTENTIONS

COMPLAINANT:

The disputed domain name <swiskrono.com> is a typo of the Complainant official domain name "swisskrono.com", thus it fully incorporates the word mark except for the letter "s" which is omitted. In the case at hand, the second level domain name incorporates nine out of the ten letters of Complainant's trademark Swiss Krono, which can be considered a "dominant feature" of the relevant mark. This disputed domain name suggests that the goal of the Respondent is to pass off as the Complainant or to give the idea to the internet users that it has received the Complainant's authorization.

The Respondent is not commonly known by the disputed domain name or a name corresponding to the disputed domain name as an individual, business, or other organization. The Respondent is not an authorized dealer of the Complainant nor has ever been authorized by the Complainant in any way. There is no evidence from the Respondent of its use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services before any notice of the dispute. The Respondent is not making a bona fide offering of goods or services related to the denomination "SWISS KRONO" for paragraph 4(c) (i) of the Policy. The Complainant contends that the Respondent is a serial cyber squatter as evidenced by the circumstance that it registered numerous separate domain names all misspelling notorious trademarks, such as: "aristoin.com" (which is bidding on ARISTON well-known trademark), "borealisgraup.com" (which is exploiting the BOREALIS renown mark), "groz-beckart.com" (which is capitalizing on the reputation of the GROZ-BECKERT mark), and so on.

As to Bad Faith, the disputed domain name is a typo squatting of the well-known SWISS KRONO trademark of the Complainant. The disputed domain name was registered in the name of the Respondent on 27 April 2022—many years after the Complainant obtained its first trademarks. In light of the distinctiveness and extensive use of the Complainant's marks, it is clear the Respondent was well aware of the SWISS KRONO trademark and registered the disputed domain name with intent to pass off the Complainant's goodwill and reputation. Due to its extensive use and its distinctiveness, it is inconceivable that the Respondent was unaware of the existence of the Complainant's registered trademark at the time of the registration. Furthermore, the Complainant contends that the Respondent has targeted many well-known trademarks, all by typo squatting and is a professional cyber squatter.

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

There is no question that the Complainant has rights in the name and mark. The Panel is prepared to accept it is a well-known mark. The disputed domain name contains the word mark less only one letter – a missing S. It is a .com and this can represent that a domain is official or is the Complainant and raises issues of impersonation. Those issues are not rebutted anywhere in this case. It appears on the face of the matter to be a classic case of typo squatting. Fundamentally, use of a domain name will not be considered “fair” if it falsely suggests affiliation with the trade mark owner. Generally speaking, UDRP panels have found that domain names that are near identical to a complainant’s trade mark carry a high risk of implied affiliation. Even where a domain name consists of a trade mark plus an additional term UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner.

There is no legitimate right or use on the face of the matter. If there is a legitimate reason then the Respondent bears the burden once the Complainant has made out a prima facie case under the Policy. The disputed domain name has no meaning. There is no common or ordinary or descriptive use and no bona fide use. The Respondent has not come forward to explain his registration. The WHOIS records show he is not known by the mark. Past panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to it, see for instance the Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com>. There are no factors on the face of it that would support legitimate use and the Respondent has not come forward to assert any.

While passive use is not bad faith per se, it is fact sensitive. The WIPO overview says

“3.3. Can the “passive holding” or non-use of a domain name support a finding of bad faith? From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. While panellists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.”

Here, the Complainant says the non-use demonstrates a lack of legitimate interests in respect of the disputed domain name, see WIPO Case No. D2000-1164, Boeing Co. v. Bressi (“the Respondent has advanced no basis on which he could conclude that it has a right or legitimate interest in the domain names”).

Here it appears that the Respondent has registered a famous mark, with full knowledge and without valid reason and he has not come forward to explain himself. It appears that this is a paradigm case of typo-squatting. When looking at bad faith - the focus is free-riding or taking unfair advantage of a Complainant’s mark. This can be established by any of the factors from the Policy at paragraph 4(b) (although these are non-exclusive, and other scenarios may also arise). Where a mark is famous and there is no obvious reason for its selection and the Respondent has not come forward to explain, it will often be reasonable to find bad faith. See WIPO case, Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003. In this case, we did not have any evidence of the configuration of MX records – often this will suggest email use and the purpose is often then an illegal one. We cannot be certain of this. However, this case is firmly in the impersonation zone so that is likely.

The evidence of a pattern of conduct is not sufficiently compelling for a finding of a pattern as a stand-alone ground of Bad Faith but the Panel is prepared to believe that the Respondent is a repeat offender.

The Complainant has discharged its burden on all three limbs of the Policy.

The Panel finds that as there is no use, the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Panel finds the Respondent has registered the disputed domain name in bad faith and is using it in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **swiskrono.com**: Transferred

PANELLISTS

Name	Victoria McEvedy
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DATE OF PANEL DECISION **2023-05-29**

Publish the Decision
